RECENT CASES.

ADULTERY, WHAT IS.—A, having recovered a judgment of divorce from B, in good faith married C. The judgment was reversed on appeal. *Held*—That A had not committed adultery by her cohabitation with C, though that marriage was invalid, and children born of it would be illegitimate. The decree of divorce was in effect "an invitation extended by the law itself" to a new marriage. Immoral intent is of the essence of the crime. *Bailey* v. *Bailey*, 45 Hun, 283, 36 Alb. L. R. 264.

AGENCY—RATIFICATION.—The agent of A, an insurance company, wrote a policy for B, B giving his note for the premium. It was also agreed between them that if the policy, on being sent to B, did not suit him it could be returned and the note would be given back. The policy was not satisfactory, and was returned, but A claimed to recover on the note because the agent exceeded his authority in making the agreement to return it. *Held*—the agreement was part of the contract, and if that was void, the whole was void. The company could not ratify a part and repudiate the remainder. *Jacoway* v. *Germ. Ins. Co.*, 5 S. W. Rep. 339 (Ark.).

CONSTITUTIONAL LAW—POLICE POWER.—The Board of Health of the city of Boston ordered that all rags imported should be disinfected. The defendant, under orders from the Board, disinfected some belonging to the plaintiffs, who refuse to pay the charges, and bring suit for the rags. *Held*—The provision is constitutional as being within the police power of the State. "There can be no doubt of the right of the legislature to pronounce, under its police power, certain things or certain acts nuisances in themselves. Nor are such laws obnoxious to any constitutional provision, because they do not provide compensation to the individual whose liberty to keep or do them is restrained." *Train* v. *Boston Disinfecting Co.*, 11 N. E. Rep. 929 (Mass.).

CORPORATION—LIABILITY FOR CONSPIRACY.—"If actions can be maintained against corporations for malicious prosecution, libel, assault and battery, and other torts, we can perceive no reason for holding that actions may not be maintained against them for conspiracy." *Buffalo Lubricating Oil Co.* v. *Standard Oil Co.*, 12 N. E. Rep. 825 (N.Y.).

The editor's note cites numerous cases to show that the doctrine that corporations are not liable in tort is exploded. To the same effect, *D. & R. G. R. Co.* v. *Harris*, Wash. Law Rep. 609.

EVIDENCE—COMPARISON OF HANDWRITING.—A depositor sues a bank for his balance. They claim to hold vouchers for it, but plaintiff says they are not genuine. The defendant's cashier testifies that the signature is the plaintiff's, and on cross-examination is asked if two specimens of handwriting submitted to him, and not in any way connected with the case, are also in the plaintiff's hand. He says they are. A witness for the plaintiff is allowed to testify that he wrote them during the trial. *Held*—Error. Extrinsic papers are not admissible into the case, on the ground that it would lead to an indefinite number of collateral issues. *Rose* v. *First National Bank*, 23 Rep. 694 (Mo.).

EVIDENCE, REAL.—A physician, in order to show the jury that a woman was paralyzed on one side, thrust a pin into her flesh in several places. Neither the physician nor the woman had been sworn. This was alleged as error, because they might wholly deceive Court and jury, without being liable for perjury. But the Court thought that the oath to tell the truth did not fit the case, and knew of no other oath to administer to witnesses save that to interpret correctly, which is equally unsuitable. And it is unquestionable that in civil cases one may exhibit his injuries to the jury. *Osborne* v. *City of Detroit*, 32 Fed. Rep. 36.

INFANT—WHAT ARE NECESSARIES.—*Ryder* v. *Wombwell*, L. R. 4 Ex. 32, which did not allow it to be shown that goods were not necessaries, because the infant was already supplied, is no longer law in England. It was not followed in *Barnes* v. *Taye*, 13 Q.B.D. 410, and has been expressly dissented from by the High Court of Justice, Lord Esher, M. R., stating in terms that he would hold it wrong if the point ever came before him sitting in a Court of Appeal.—*Johnstone* v. *Marks*, 35 W. R. 806.

MORTGAGE — FORECLOSURE. — A mortgage on real estate in Illinois, given to secure the payment of two negotiable notes, contained a covenant that on default of interest both notes should become due at once. The United States Circuit Court allowed a *bona fide* purchaser of the notes and mortgage before maturity to foreclose, on default of interest, for the entire sum, without reference to equities against the mortgagee. In this they follow the rule of the United States Supreme Court at the same time noticing the fact that the Illinois Supreme Court would allow any defence which would be good between the original parties. *Swett* v. *Stark*, 31 Fed. Rep. 858.

NEGLIGENCE — BANK DIRECTORS. — Bank directors are trustees for depositors as well as stockholders, and are liable to both for losses resulting from their neglect of duty. *Delano* v. *Case*, 24 Rep. 432 (Ill.).

It is difficult to consider the directors of a bank as trustees for the depositors. The depositors are simply creditors of the corporation; the directors are the agents of the corporation. This being so, the directors are liable only to the corporation for their breach of duty. But they may be liable to the depositors indirectly through the corporation in case of its bankruptcy. That is, the right of action vested in the corporation against its agents is an asset which can be reached by the depositors by a bill in equity to compel the corporation to reduce it to possession. And equity will go farther and join the directors in the suit, thus avoiding multiplicity of actions.

A remedy in tort is not ordinarily given in such cases, except in the absence of other remedy.

PARTNERSHIP — LIABILITY IN JOINT ENTERPRISE. — Four companies owning steamboats put the business of obtaining custom for their boats in the hands of a corporation called the Kountz Line. Each company conducted its own affairs, and received from its agents, the Kountz Line Corporation, all the earnings of its own boat. One of the boats, loaded with goods insured by the plaintiff, was lost through unseaworthiness. There was no evidence that the owner shipped the goods on the faith of an existing partnership. *Held* — The plaintiffs can recover from the other three companies of the Kountz Line on the ground that they held themselves out to the public as partners, and are liable as such. *Sun Ins. Co.* v. *Kountz Line*, 7 Sup. Ct. Rep. 1278. Reversing 10 Fed. Rep. 768.

PARTNERSHIP — VOLUNTARY ASSOCIATIONS. — Certain persons, among whom were the defendants, by voluntary contributions ranging from fifty cents to five dollars, formed the "Bridgeport Coöperative Association," an unincorporated society, for the purpose of providing meat to members and others at cost. On the failing of the concern, it was *Held* — That defendants were liable individually for the debts contracted by the concern. If the plaintiffs had sued the Association under its assumed name they could have had execution upon the Association property only. The defendants here could have interposed a plea in abatement, and compelled all the members to be joined; but, not having done so, they are liable. The question is determined by the law of agency. *Davison* v. *Holden*, 10 Atl. Rep. 515 (Conn.).

PROMISSORY NOTES — ACCOMMODATION — ON DEMAND. — The fact that a note is an accommodation note is a good defence against a holder for value, who acquired the note after it was due. A demand note is due after a reasonable time, and that is, in most cases, a question for the jury. *Bacon* v. *Harris*, 36 Alb. L. J. 282 (R. I.).

PURCHASER FOR VALUE WITHOUT NOTICE. — One who buys property subject to an unrecorded chattel-mortgage, and credits the purchase price upon a debt due from the vendor is not a *bona fide* purchaser for value, and is liable on a suit to foreclose. *Overstreet* v. *Manning*, 24 Rep. 445 (Tex.).

RIGHT OF WAY. — When land is divided into lots, and a plat is recorded, a conveyance of lots describing them by a reference to the plat carries to the grantee a right of way over the streets therein indicated, even when the fee in the streets remains in the grantor. *Chapin* v. *Brown*, 10 Atl. Rep. 639 (R. I.).

The opinion reviews the authorities, and a note collects cases on the dedication of streets to public use by recording such a plat.

SALE BY SAMPLE — CAVEAT EMPTOR. — Worsted coatings were ordered of cloth manufacturers to equal in quality and weight samples previously furnished. By reason of the mode of manufacture the goods were unfit for their purpose, on account of "slipperiness" — a lack of cohesion between

warp and weft. They were equal to the sample, but, unknown to either party, the same defect existed in it. Damages were claimed because the goods were not merchantable, and the claim was allowed. Lord Herschell said: "I think that upon such an order the merchant trusts to the skill of the manufacturer, and is entitled to trust to it, and that there is an implied warranty that the manufactured article shall not, by reason of the mode of manufacture, be unfit for use in the manner in which goods of the same quality of material, and the same general character and designation, ordinarily would be used. I think, too, that, where the article does not comply with such a warranty, it may properly be said to be unmerchantable in the sense in which that word is used in relation to transactions of this nature." The Court held that this warranty was not excluded by the fact that the goods were sold by sample. *Drummond* v. *Vangen*, 12 App. Cas. 284.

TELEGRAPH COMPANY — ERROR IN MESSAGE. — The plaintiff sent a telegram to a purchaser at a distance reading, "Will sell 800 M. laths, delivered at your wharf, two ten net cash." The company, in sending the message, left out the word "ten." The purchaser immediately accepted the offer. Before the goods were sent the error was discovered, but the purchaser demanded performance, and the plaintiff sent the goods. He now sues for the "ten" on a thousand. *Held* — That he did what he was bound to do in sending the goods, since the contract was complete and binding. The error was the error of his agent, and he may recover from the defendant as such. *Ayer* v. *Western Union Tel. Co.*, 10 Atl. Rep. 495; 36 Alb. L. J. 311 (Me.). This seems in accord with the American authorities. English law is *contra*. *Henkel* v. *Pape*, L. R. 6 Ex. 7.

TRUST, SECRET — PAROL EVIDENCE. — A testator bequeathed £500 to A and B, "relying, but not by way of trust, on their applying the same sum for and toward the objects, privately communicated to them." The executors objected to paying over the bequest, on the ground that there was a secret trust which appeared to be illegal. The legatees contended that as the will said there was no trust, the Court could not inquire further. But it was held that evidence is admissible in such cases as to whether there was a promise on the part of the legatees. For otherwise money might be left for illegal purposes, or legatees might keep for themselves what they really received in trust. *Re Spencer's Will*, 83 L. T. 274.

WATER RIGHTS. — The defendant railroad built a dam across a stream, above the plaintiff's mill, for the purpose of supplying their trains with water. *Held* — That is not such a use of the stream as will entitle the defendants to diminish the flow of water to the plaintiff's injury. *Anderson* v. *Cincinnati Southern R'y Co.*, 24 Rep. 502 (Ky.).

WILLS — ILLEGITIMATE CHILDREN BORN AFTER THE MAKING OF THE WILL. — The case of *Occleston* v. *Fullalove*, 9 Ch. Ap. 147, which allowed an after-born child to take property under a devise by her father to his children by his deceased wife's sister, with whom he had gone through the ceremony of marriage, has just been followed in England. In *Occleston* v. *Fullalove* the controversy was in regard to a child that was *en ventre sa mère* at the date of the will, but not so described. Vice-Chancellor Wickens held it contrary to public policy to allow such provision for the fruit of future illicit cohabitation. James and Mellish, L. JJ., reversed the decree on appeal, Selborne, L. C., dissenting. The Lords Justices proceeded largely on the ground that a will does not take effect till the testator's death, and hence such a provision is not for illegitimate children to be begotten in the future. The case is followed as binding, but with apparent reluctance. *In re Hastie's Trusts*, 35 Ch. D. 728.

Considering the question as one of public policy, the ground of the decision seems a narrow one, and the difference of opinion among the judges will deprive the case of any great weight where it is not a precedent. In fact, Lord Stirling almost advises the parties against whom he decides to appeal; so it can scarcely be said to settle the law in England.

WITNESSES — EXCLUSION AT TRIAL. — The plaintiff called a person as witness who had been present during the whole trial, though the judge had ordered the witnesses out of the room. Neither the plaintiff nor the witness knew the latter was to be a witness till called. *Held* — That the witness is competent, and would be competent even if he had remained in the court-room after he was called, against the order of the judge. His conduct would be subject for observation only, and would not affect his competency. *State* v. *Thomas*, 13 N. E. Rep. 35 (Ind.).